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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/581,099	10/10/2006	Jiliang Tang	606932000100	5385
25225 7590 01/14/2009 MORRISON & FOERSTER LLP 12531 HIGH BLUFF DRIVE SUITE 100 SAN DIEGO, CA 92130-2040				
EXAMINER				
IBRAHIM, MEDINA AHMED				
ART UNIT		PAPER NUMBER		
1638				
MAIL DATE		DELIVERY MODE		
01/14/2009		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

**2<sup>nd</sup> Notice of Non-responsive Amendment**

The amendment filed on 06/13/08 canceling all examined claims and presenting only new claims drawn to an invention unrelated to the invention already examined is non-responsive. The new claims are not readable on the examined invention because the claims already examined were drawn to an isolated gene and use of said gene to treat plant diseases, while the new claims are drawn to a method of identifying a *Xanthomonas campestris* (Xcc) gene directly involved in pathogenicity using a broad host range cosmid comprising a transposon and a plurality of Xcc cells. Applicant's arguments filed 10/17/08 have been considered but are not found persuasive. While patent rules do not preclude Applicant from cancelling all pending claims and presenting new claims, there is no rule that allows Applicant to cancel all examined claims and present new claims that define an invention that is completely distinct and independent to the invention already examined. The new claims are drawn to an invention that is not examined in art unit 1638.

Since the above-mentioned amendment appears to be a *bona fide* attempt to reply, applicant is given a TIME PERIOD of ONE (1) MONTH or THIRTY (30) DAYS, whichever is longer, from the mailing date of this notice within which to supply the omission or correction in order to avoid abandonment. EXTENSIONS OF THIS TIME PERIOD UNDER 37 CFR 1.136(a) ARE AVAILABLE.

**Contact Information**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Medina A. Ibrahim whose telephone number is

(571)272-0797. The examiner can normally be reached on M-TH 8:00 am to 5:30 PM, and every other Friday from 8:00 AM to 5:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anne Marie Grunberg can be reached on 571-272-0975. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

MAI  
1/13/2009

/Medina A Ibrahim/  
Primary Examiner, Art Unit 1638